

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-014-14-1-5-01730-16
Petitioners: John K. and Jeanne L. Austgen
Respondent: Lake County Assessor
Parcel: 45-15-21-351-006.000-014
Assessment Year: 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioners initiated their appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on May 14, 2015. The PTABOA issued its final determination on July 27, 2016. Petitioners timely filed their petition with the Board on September 8, 2016.
2. Petitioners elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on September 11, 2017. Neither the ALJ nor the Board inspected the property.
4. Petitioners John K. Austgen and Jeanne L. Austgen were sworn as witnesses. Robert W. Metz and Joseph E. James, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a single-family dwelling located at 13136 Schneider Street in Cedar Lake. It is a rental property.
6. For 2014, the property was assessed at \$10,000 for the land and \$56,400 for the improvements for a total of \$66,400.
7. Petitioners requested a total assessment of \$44,000.

Record

8. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1:	Goodnight appraisal as of February 11, 2008,
Petitioner Exhibit 2:	Goodnight appraisal as of July 5, 2016,
Petitioner Exhibit 3:	Property record card (“PRC”) for the subject property,
Petitioner Exhibit 4:	Form 115 for March 1, 2007,
Petitioner Exhibit 5:	Form 113 for March 1, 2008,
Petitioner Exhibit 6:	Form 113 for March 1, 2009,
Petitioner Exhibit 7:	Forms 113 for March 1, 2010 and March 1, 2011,
Petitioner Exhibit 8:	Form TS-1 for 2012 pay 2013,
Petitioner Exhibit 9:	Form TS-1 for 2013 pay 2014,
Petitioner Exhibit 10:	Form 113 for March 1, 2012,
Petitioner Exhibit 11:	Form TS-1 for 2014 pay 2015,
Respondent Exhibit 1:	PRC for the subject property,
Respondent Exhibit 2:	Weighted analysis of comparable sales,
Respondent Exhibit 3:	Multiple Listing Service (“MLS”) report for comparable 1 at 14018 Butternut St.,
Respondent Exhibit 4:	MLS report for comparable 2 at 11308 W. 126 th Ave.,
Respondent Exhibit 5:	MLS report for comparable 3 at 13938 Huseman St.,
Respondent Exhibit 6:	MLS report for comparable 4 at 12909 Hilltop St.,
Respondent Exhibit 7:	MLS report for comparable 5 at 7100 W. 129 th Ave.,
Respondent Exhibit 8:	MLS report for comparable 6 at 7500 W. 128 th Ave.,
Respondent Exhibits 9 & 10:	MLS report for comparable 7 at 13422 Fairbanks St.,
Respondent Exhibit 11:	MLS report for comparable 8 at 14706 Huseman St.,
Respondent Exhibit 12:	MLS report for comparable 9 at 14129 Butternut St.,
Respondent Exhibit 13:	MLS report for comparable 10 at 13704 Birch St.,
Respondent Exhibit 14:	MLS sales data for the gross rent multiplier (“GRM”) calculation,
Respondent Exhibit 15:	MLS sales data for the GRM calculation,
Respondent Exhibit 16:	Spreadsheet of current market rental data,

Respondent Rebuttal Exhibit R1: Real Property Maintenance Report for 2013 pay 2014,

Respondent Rebuttal Exhibit R2: Real Property Maintenance Report for 2016 pay 2017,

Board Exhibit A: Form 131 petition with attachments,

Board Exhibit B: Notice of Hearing,

Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value decreased from 2013 to 2014. Petitioners have the burden of proof.

Summary of Contentions

14. Petitioners' case:

- a. The subject property is a single-family rental property that Petitioners contend is over-assessed. Petitioners submitted two appraisals prepared by Joseph Goodnight, a certified residential appraiser. Mr. Goodnight prepared the appraisals in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). Mr. Goodnight estimated income approach values of \$42,000 as of February 11, 2008 and \$44,000 as of July 5, 2016. *Austgen testimony; Pet’r Exs. 1 and 2.*¹
- b. Petitioners have appealed the assessment of the subject property for several years. From 2007 to 2011, the assessed value was always approximately \$40,000. In 2012, the value increased to \$72,800, which the assessor eventually reduced to \$42,400. In 2013 the assessed value again increased to \$72,900. When Petitioners received their tax bill, they inquired as to the reason for the increase. According to Petitioners, Mr. Metz said there probably was a trending or mathematical error. Based on that, Petitioners filed Form 133s for 2013 and 2014. When Petitioners did not receive a response to the Form 133s, they called Respondent and were told the error was in a “gray” area as to whether it was subjective or objective. Petitioners did not pursue the appeal for the 2013 assessment, but did file a Form 131 for the 2014 assessment.² *Austgen testimony; Pet’r Exs. 4-11; Board Ex. A.*
- c. Petitioners contend there have been no changes to the property over the years. There has also been no change in the rental income because they claim that any increase in rent was offset by the expense of hiring a property manager. *Austgen testimony.*
- d. The appraiser did not err regarding the land in the 2016 appraisal, the Lake County Auditor and Respondent consolidated parcels in 2016 making the subject parcel 1.812 acres; however, the land area was only .536 acres in 2014. According to Petitioners, the appraiser was correct in not including the additional land in the appraisal for 2014. *Austgen argument; Pet’r Ex. 2.*
- e. Petitioners contend Respondent’s evidence and associated calculations fail to support the assessed value of \$66,400. *Austgen testimony; Resp’t Exs. 2, 14 and 15.*

¹ In each of his appraisals, Mr. Goodnight also prepared a sales comparison approach to value. With that approach he estimated the 2008 value at \$70,000 and the 2016 value at \$61,000.

² After Petitioners filed a Form 133 for 2013 and for 2014 the Assessor issued a Form 138 Notice of Defect for both years stating that a Form 130 should have been filed; however, the PTABOA also issued a Form 115 for 2014.

15. Respondent's case:
- a. According to Mr. Metz, Petitioners' 2008 appraisal is too far removed from the valuation date and should be ignored. He also claimed that its use for this appeal is "questionable" because the appraisal was undertaken as part of a mortgage finance transaction. *Metz testimony; Pet'r Ex. 1.*
 - b. According to Mr. Metz, the 2016 appraisal falls outside of the relevant valuation period. Additionally, Respondent contends the appraiser made an error in the land size in the 2016 appraisal. It shows .536 acres when, in fact, the property was 1.812 acres in 2016. Respondent contends this error is a violation of USPAP Standard 1-1(b). In light of these considerations, Respondent argues the Board should disregard the 2016 appraisal. *Metz testimony; Pet'r Ex. 2.*
 - c. Respondent presented a weighted sales analysis that indicates a price per square foot of \$76.53. Based on that analysis, Respondent contends that the value of the subject property would be approximately \$77,500. *Metz testimony; Resp't Ex. 2.*
 - d. Both appraisals offered by Petitioners used the direct capitalization method. A Gross Rent Multiplier, however, is the preferred method of valuing a property that has at least one and not more than four rental units. The sales of rental properties reflected in Respondent Exhibits 14 and 15 indicate GRMs of 81.74, 83.33, and 77.32. Applying the lowest GRM of 77.32 to the \$875 per month rent for the subject property results in a value of approximately \$67,600. At one point in the hearing Mr. Metz asked to leave the value as it is (at \$66,400), but later in the hearing he asked to raise the assessed value to \$67,600. *Metz testimony; Resp't Exs. 14-16.*

ANALYSIS

16. Petitioners failed to establish a prima facie case for a reduction in the 2014 assessed value. Respondent failed to make a case for an increase in the assessed value. The Board reached these decisions for the following reasons:
- a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment at issue in this appeal was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f).
- c. A specific statute applies to the valuation of rental properties such as the one at issue. According to Ind. Code § 6-1.1-4-39 the GRM method is *preferred* for valuing real property with one to four rental units. We agree with Petitioners that the statutory language about the preferred method of valuing such properties is not an absolute requirement to use the GRM method.
- d. Petitioners offered two USPAP compliant appraisals prepared by a certified residential appraiser. They estimated the value of the subject property using the income approach at \$42,000 as of 2008 and \$44,000 as of 2016. Even though the appraisals did not use the GRM method, the income approach in the appraisals could be a viable alternative to the preferred methodology. But the Board has routinely found that appraisals valuing a property as of a date more than one year outside of the required valuation date for the disputed assessment lack probative value if there was no evidence to relate the appraised value to that required valuation date. *See Joas and Dana Weirich v. St. Joseph Cnty. Assessor*, Ind. Bd. of Tax Rev. Pet. No. 71-011-15-1-5-01739-16 (June 27, 2017); *Mary L. Wells v. Noble Cnty. Assessor*, Ind. Bd. of Tax Rev. Pet. No. 57-010-14-1-5-20338-15 (August 3, 2016). And here Petitioners failed to relate the appraised values to the required 2014 valuation date, which was March 1, 2014. Therefore these appraisals do not help to prove a more accurate valuation for the subject property.
- e. Petitioners' alternative argument is equally unpersuasive. They appealed the assessments for 2007 through 2012 and ultimately got assessed values that ranged from \$37,600 to \$42,400 for the subject property. They testified that nothing about the property had changed in 2014. Nevertheless, it is well-settled that each assessment year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) (“[F]inally, the court reminds Fleet Supply that each assessment and each tax year stands alone.... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”) Petitioners' reliance on assessed values from 2007 through 2012 to prove the correct value in 2014 was misplaced.
- f. Petitioners failed to make a prima facie case for reducing the assessment. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

- g. In this case, however, our analysis must continue. During the hearing Mr. Metz initially stated that we should leave the assessed value as it is, even though Respondent's evidence supported a higher value. Then later he requested an increase.
- h. Respondent offered a sales analysis to support a value of approximately \$77,500. Respondent submitted a weighted analysis of purportedly comparable sales. But when comparing properties using the sales comparison approach, conclusory statements that a property is "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470. The proponent must identify the characteristics of the subject property and explain how those characteristics of the subject property compare to the characteristics of the purportedly comparable properties. *Id* at 471. The Respondent failed to offer sufficient facts and analysis for a meaningful comparison of the subject property with the alleged comparable properties. Therefore, the purportedly comparable sales do not support any conclusion about the correct assessed value for the subject property.
- i. Because it is the statutorily preferred method to value this type of property, Respondent also offered a GRM calculation to support a value of approximately \$67,600. Mr. Metz pointed to the sales of two rental properties in 2015 and calculated GRMs based on those sale prices and rents. The limited data (the use of only two other properties) to develop a GRM seriously impacts our confidence in using a GRM between 77.73 and 83.3—even though neither party addressed what the requirements should be to determine a reliable GRM. This method develops an income multiplier by looking to market data for sales of comparable income-producing properties and calculates the ratio of the sale price to the gross income at the time of the sale. An opinion of value can then be calculated by multiplying the GRM by the annual income base for the subject property.
- j. The GRM method eliminates the complex value adjustments required by the sales comparison approach by assuming differences between the properties are reflected in their respective rental rates. But in order to derive and apply a reliable GRM for valuation purposes, the properties analyzed must be comparable to the subject property in terms of physical, geographic, and investment characteristics. Again, Mr. Metz made no comparison of the subject property with the alleged comparable properties. Further, he did not relate the 2015 GRMs back to the 2014 assessment date of the subject property. Therefore, the GRM calculation does not support any conclusion about the correct assessed value for the subject property.

CONCLUSION

- 17. Petitioners failed to establish a prima facie case for a reduction in the 2014 assessed value and Respondent failed to make a case for an increase in that value.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2014 assessed value will not be changed.

ISSUED: December 1, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.